

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
1998 Biennial Regulatory Review -	)	CC Docket No. 98-171
Streamlined Contributor Reporting	)	
Telecommunications Relay Service, North	)	
American Numbering Plan, Local Number	)	
Portability, and Universal Service Support	)	
Mechanisms	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21
National Exchange Carrier Associations, Inc.	)	
_____	)	

**COMMENTS OF ALLIANCE GROUP SERVICES, INC.  
IN SUPPORT OF RECONSIDERATION OR REVIEW**

Alliance Group Services, Inc. (hereinafter, “Alliance”), through its undersigned counsel, and pursuant to the Federal Communications Commission’s (“Commission”) Public Notice of March 16, 2005<sup>1</sup> hereby submits Comments in support of three Applications for Review of the Bureau’s *Form 499-A Order*,<sup>2</sup> filed by Business Discount Plan, Inc. (“BDP”), Qwest Communications International (“Qwest”), and SBC Communications (“SBC”),. These

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<sup>1</sup> *Parties are Invited to Comment on Applications for Review and Petition for Reconsideration of Order Revising Instructions for Form 499-A*, Public Notice, DA 05-691, released March 16, 2005.

<sup>2</sup> *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Changes to the Board of Directors of the National Exchange Carrier Associations, Inc.*, Order, CC Docket Nos. 96-45, 98-171, 97-21, DA 04-3669 (rel.. Dec. 9, 2004) (“*Form 499-A Order*”).

comments are also submitted in support, in the alternative, of Sprint Corporation's ("Sprint") Petition for Reconsideration of the *Form 499-A Order* (collectively, "Petitioners").

**I. BACKGROUND: ALLIANCE'S ATTEMPT TO FILE CORRECTED FORM 499-As FOR 2000 AND 2001**

By way of background, on October 30, 2001, Alliance submitted to the Commission and USAC an Appeal of USAC's decision rejecting a 499 submitted by Alliance for the reporting year 2000 (for revenues generated in 1999).<sup>3</sup> Many of the issues raised by the Petitioners are similarly addressed in Alliance's January 10, 2005 Request for Further Review and Submission of Supplemental Information.<sup>4</sup> By these instant comments, Alliance reiterates and incorporates by reference the critical points of information contained in the Company's initial *Appeal*, its *Request for Review*, and appends a copy of each to this submission as *Attachment A* and *Attachment B*, respectively.

By way of background, Alliance and another company, US Republic, a subsidiary of VarTec Telecom Holding Company ("VarTec"), entered into an Asset Purchase Agreement ("Agreement") on December 23, 1999 ("Transfer Date"). Central to this purchase were the terms of the Agreement which limited the sale to US Republic's customer list and did not include actual stock, facilities, or equipment.

Nevertheless, USAC billed Alliance for USF obligations, beginning on September 22, 2000, based upon the 2000 Form 499A revenues reported by VarTec on behalf of its

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<sup>3</sup> Appeal of Decision of the Universal Service Administrative Company Concerning Alliance Revision to Form 499-A, filed October 30, 2001 ("*Appeal*"). Alliance filed its 2000 Form 499-A in April of 2001.

<sup>4</sup> See January 10, 2005 Request for Further Review and Submission of Supplemental Information, from Brad E. Mutschelknaus and Darius B. Withers, Counsel to Alliance Group Services, Inc. to Jeffrey A. Mitchell, Associate General Counsel, Universal Service Administrative Company ("*Request for Review*").

subsidiary, U.S. Republic. Thereafter, on October 22, November 22 and December 22, 2000, USAC billed Alliance for the remainder of what would have been US Republic's USF obligation based on that company's 1999 revenues (as reported in the April 2000 499A), a total of approximately \$763,717.56.

Most important, however, is the basis by which USAC made this change in its invoicing to Alliance. As determined in subsequent communications with USAC, USAC adheres to a theory that Alliance, as the purchaser of US Republic's revenues in 1999, bears the responsibility for information and revenues reported on the earlier filed 499A. According to USAC, Alliance may not, therefore, submit a revised 499A form beyond the one-year revision deadline. Alliance disagrees strongly with USAC's interpretation of its legal and regulatory authority for the reasons outlined in its *Appeal*, its *Request for Review*, and in the Petitioners' Applications for Review and Request for Reconsideration.

## **II. PETITIONERS CORRECTLY IDENTIFY THAT THE STANDARDS FOR REVIEW OF AN AMENDED FORM 499-As AS ADOPTED IN THE FORM 499-A ORDER ARE PROCEDURALLY AND SUBSTANTIVELY DEFICIENT**

The Applications filed by SBC, Qwest and BDP, and the Sprint Petition, challenge several conclusions contained in *Form 499-A Order*: (1) the one-year statute of limitations that the Order imposes prospectively on Form 499-A revisions that reduce a carrier's USF payment obligation; (2) the "one-way ratchet" policy that limits a carrier's ability to amend its filings to achieve reductions in its USF obligation, but that provide no limits on upward revisions to that obligation; and (3) the imposition of a "good cause" test for acceptance of revised Form 499-As for years preceding 2005.

The applicants are correct in their conclusions that the *Form 499-A Order* is flawed, both as a procedural matter and on substantive grounds. Furthermore, as is proposed by the Petitioners, these deficiencies require its rescission and withdrawal. Specifically, all parties correctly conclude that the *Form 499-A Order* is not merely a procedural order, but effects substantive rule changes, which violates the Administrative Procedure Act, and exceeds the Wireline Competition Bureau's range of authority. (BDP at 12-21; Qwest at 3-7; SBC at 7-10). The parties also properly assert that the substantive rule changes are inconsistent with Sections 254 and other provisions of the Communications Act and prior Commission orders. (Qwest at 8-9; BDP at 5) All parties note that the disparate treatment of amended filings that reduce vs. increase USF payments is arbitrary and capricious and constitutes bad policy. (SBC at 11-12; Qwest at 9-10; BDP at 20-21; Sprint at 1-4) SBC correctly notes that the "good cause" test adopted in the *Order* for retroactive amendments prior to 2005 is beyond the scope of the Wireline Competition Bureau's authority and inconsistent with Commission orders and the existing Form 499-A instructions. (SBC at 12 n. 36) For all the foregoing reasons, rescission and withdrawal of the *Form 499-A Order* is mandated by law and policy.

These arguments reflect Alliance's arguments that USAC's refusal to accept Alliance's revised filings for 2000 and 2001, using standards codified subsequently in the *Form 499-A Order*, lead to a gross overstatement of Alliance's USF obligation and constitute double recovery of USF payments. Alliance agrees with SBC, Qwest, BDP and Sprint that the procedural and substantive deficiencies of the *Form 499-A Order* – and in USAC's refusal to accept Alliance's revised Form 499-As for 2000 and 2001 – compel the rescission and withdrawal of the Order, and the acceptance of the revised forms submitted by Alliance and the other parties.

### III. SUMMARY AND CONCLUSION

For the reasons described herein, Alliance respectfully requests that the Commission rescind the *Form 499-A Order* and subsequently instruct USAC to accept and process revised Form 499-As, pursuant to the existing Form instructions, beyond a one-year limitation period.

Respectfully submitted,

By: /s/ Darius B. Withers /s/

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